

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

DYNAMIC 3D GEOSOLUTIONS LLC,) AUSTIN, TEXAS
)
VS.)
)
SCHLUMBERGER LIMITED, SCHLUMBERGER HOLDINGS CORPORATION,) AU:14-CV-00112-LY
SCHLUMBERGER TECHNOLOGY CORPORATION, SCHLUMBERGER)
LIMITED (SCHLUMBERGER N.V.), AUSTIN GEOMODELING, INC.,)

SCHLUMBERGER LIMITED, SCHLUMBERGER HOLDINGS CORPORATION,) AU:14-CV-00934-LY
SCHLUMBERGER TECHNOLOGY CORPORATION, SCHLUMBERGER)
LIMITED, SCHLUMBERGER HOLDINGS CORPORATION, SCHLUMBERGER)
TECHNOLOGY CORPORATION, COLLINS, EDMONDS, POGORZELSKI,)
SCHLATHER & TOWER, PLLC)

SCHLUMBERGER HOLDINGS CORPORATION, SCHLUMBERGER) AU:14-CV-00967-LY
TECHNOLOGY CORPORATION, SCHLUMBERGER LIMITED)
(SCHLUMBERGER N.V.), SCHLUMBERGER LIMITED (SCHLUMBERGER)
N.V.), GARY FISCHMAN, ACACIA RESEARCH GROUP LLC) NOVEMBER 6, 2014

TRANSCRIPT OF MOTIONS HEARING

BEFORE THE HONORABLE MARK LANE

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26 Proceedings recorded by electronic sound recording, transcript
27 produced by computer.

09:12:07 1 (Proceedings began at 9:28 a.m.)

09:12:07 2 THE CLERK: The Court calls A:14-CV-112, *Dynamic 3D*
09:12:22 3 *Geosolutions LLC v. Schlumberger Limited, et al.*; A:14-CV-934,
09:12:37 4 *Dynamic 3D Geosolutions LLC v. Schlumberger Limited, et al.*;
09:12:40 5 and A:14-CV-967, *Dynamic 3D Geosolutions v. Schlumberger*
09:12:52 6 *Holdings Corporations, et al.*, for a motions hearing.

09:12:56 7 THE COURT: Well, very good. In a moment I'm going
09:12:58 8 to ask all the attorneys to introduce themselves so I can get
09:13:01 9 oriented. But besides not having life tenure, the other big
09:13:06 10 difference here is I don't have a court reporter either. So a
09:13:09 11 reminder to all of you, use these microphones in front of you.
09:13:13 12 Make sure they're kind of pointed toward you so that it picks
09:13:17 13 up what you say for posterity.

09:13:35 14 Perhaps starting over here on the left, if everybody
09:13:38 15 could introduce themselves.

09:13:41 16 MR. COLLINS: Yes, Your Honor. Michael Collins from
09:13:44 17 the law firm Collins, Edmonds, Pogorzelski, Schlather & Tower.
09:13:49 18 Today I'm with my colleague Matt Juren, who is also with our
09:13:54 19 law firm. We represent Plaintiff Dynamic 3D Geosolutions Inc.
09:13:59 20 on its motion for protection, and we represent non-movants --
09:14:04 21 or nonparty movants Collins Edmonds Porgorzelski, et al., and
09:14:10 22 me as well as nonparty movant Austin Geomodeling, Inc. on their
09:14:18 23 motions to quash.

09:14:21 24 THE COURT: Okay. Okay. Very good. Thank you.

09:14:25 25 MR. CONNOR: Good Morning Judge. Cabrach Connor from

09:14:28 1 Taylor Dunham and Rodriguez on behalf of third-party movants
09:14:33 2 Gary Fischman and Acacia Research Group. And I'm joined with
09:14:38 3 my partner Miguel Rodriguez and also from the Stradling firm in
09:14:44 4 California, Travis Brennan.

09:14:48 5 MR. BRENNAN: Good morning, Your Honor.

09:14:49 6 THE COURT: Good morning to each of you. Thank you.

09:14:50 7 MR. WINGARD: Good morning, Your Honor. Steve
09:14:53 8 Wingard with Scott, Douglass & McConnico we represent
09:14:55 9 Schlumberger. I'm here this morning with Max Grant from
09:15:00 10 Latham & Watkins.

09:15:02 11 MR. GRANT: Good morning, sir.

09:15:03 12 THE COURT: Good morning.

09:15:04 13 MR. WINGARD: Terry Connolly from Latham & Watkins.

09:15:05 14 MR. CONNOLLY: Good morning, Your Honor.

09:15:05 15 MR. WINGARD: Tom Humphrey from Latham & Watkins and
09:15:08 16 Dave Slater who is running our IT stuff.

09:15:12 17 THE COURT: All right. Well, very good. Thank you,
09:15:14 18 gentlemen.

09:15:16 19 Okay. You-all have produced a tremendous amount of
09:37:17 20 paperwork, and I've tried to read it all. I really have. But
09:37:23 21 I thought what I would at least start with is tell you what I
09:37:26 22 really don't want to talk about today and then focus on what I
09:37:32 23 do want to talk about. I really don't think it will be
09:37:38 24 productive to talk about blame one way or the other on who
09:37:45 25 should have met and conferred and who didn't. I just don't

09:37:50 1 think that will be helpful. I also don't want to talk about,
09:37:55 2 you know, inability or there wasn't a reasonable period of time
09:37:59 3 in which to comply with the original subpoenas. I don't think
09:38:02 4 that will be helpful -- that they're untimely; that the
09:38:06 5 briefing period has passed and so that production has -- is
09:38:11 6 irrelevant or moot because of that. That Schlumberger's first
09:38:19 7 set of subpoenas were overbroad. I think everybody's conceded
09:38:22 8 that they probably were. But, nonetheless, we're going to
09:38:31 9 have -- we're going to have to move forward. I don't want to
09:38:34 10 talk about sanctions, and don't really -- you know,
09:38:38 11 characterizing all of this as harassment, I think is -- I
09:38:43 12 understand the advocacy there but, again, I don't think that
09:38:47 13 will be productive.

09:38:48 14 Here's what I do think is going to be productive:
09:38:54 15 Judge Yeakel clearly authorized some discovery here. He warned
09:39:04 16 Schlumberger not to be -- I guess the word I'll use is
09:39:07 17 "abusive" -- with it. But, nonetheless, he did authorize
09:39:11 18 something. So I think we all concede that, there is going to
09:39:15 19 be some exchange of information and documents here. The issue
09:39:20 20 for me is what is a reasonable amount of discovery and what's
09:39:30 21 relevant. And then, lastly, I want to avoid burdening the
09:39:40 22 wrong party with producing something that perhaps another party
09:39:44 23 is in a better position to produce.

09:39:47 24 Now, against that backdrop, you-all have clearly been
09:39:53 25 meeting and conferring and talking about compromises, as

09:39:59 1 evidenced by what was filed last evening which we didn't get
09:40:04 2 access to this morning until about 8:30. So we have gone
09:40:09 3 through some of that.

09:40:10 4 THE COURT: Yes, sir?

09:40:11 5 UNIDENTIFIED SPEAKER: Your Honor, may I approach the
09:40:12 6 bench?

09:40:13 7 THE COURT: Sure. I won't lie to you. I breezed
09:40:30 8 through it. Certainly I read the status -- the six-page status
09:40:34 9 report, and then I breezed through where you are with
09:40:38 10 Exhibits 1, 2, and 3. I don't have anything on Acacia though,
09:40:45 11 right? I mean, I don't know who wants to be the lead here,
09:40:49 12 but ...

09:40:51 13 MR. WINGARD: Your Honor, yesterday we were able to
09:40:54 14 confer with the attorneys for the four parties that we filed a
09:40:58 15 joint status report on. Mr. Brennan, Travis Brennan, was the
09:41:04 16 lead counsel for Acacia Research Group. And Gary Fischman, he
09:41:09 17 was in the air, and so we couldn't get authorization to file a
09:41:13 18 similar type of joint status report. It just -- the time
09:41:18 19 didn't work.

09:41:18 20 THE COURT: But is it fair to say it's -- wherever
09:41:21 21 you are, it's similar to what we have, at least with AGM and
09:41:25 22 Dynamic?

09:41:26 23 MR. WINGARD: Yes, Your Honor. I believe it is.

09:41:28 24 THE COURT: Okay. Very good. Okay. The thing that
09:46:40 25 jumps out at me is part of the -- of your efforts to reach an

09:46:46 1 agreement on the request for production, though, also appear to
09:46:51 2 be dependent upon an agreement as to stipulations. I can't
09:46:58 3 make people stipulate. So help me understand how I help you.

09:47:08 4 MR. GRANT: Your Honor, could I --

09:47:08 5 MR. COLLINS: Well, it's my motion.

09:47:09 6 MR. GRANT: I apologize.

09:47:10 7 THE COURT: And it's Mr. Grant?

09:47:11 8 MR. GRANT: Yes, sir.

09:47:13 9 THE COURT: I'll certainly let you visit with me
09:47:15 10 next.

09:47:16 11 MR. COLLINS: Your Honor, you're exactly right. You
09:47:19 12 can't force people to stipulate to any facts, and they're
09:47:27 13 asking for identical factual stipulations from not only the
09:47:32 14 plaintiff, but from my firm and me individually. The
09:47:40 15 stipulations in our view are being used as leverage to get --
09:47:46 16 get them to agree to this reduced scope of document request,
09:47:51 17 which is what they already agreed to last week with
09:47:58 18 Ms. Rutherford on her motion to quash before Judge Elison in
09:48:03 19 the Southern District of Texas.

09:48:05 20 And our view is that we're willing to give some
09:48:11 21 limited factual stipulations -- and you'll see it there in our
09:48:14 22 proposal. We're willing to give non-argumentative fact
09:48:21 23 stipulations to relevant facts, but we're not willing to
09:48:28 24 stipulate to things that may not be true that are not relevant
09:48:34 25 to the case.

09:48:37 1 So at this point what we're offering is some very
09:48:41 2 reasonable stipulations from the plaintiff only. There's no
09:48:46 3 reason to get identical stipulations, as Schlumberger is
09:48:51 4 demanding, from my firm and individually from me. It seems
09:48:55 5 that one stipulation should be fine, and we've more than bent
09:49:01 6 over backwards here saying, look, we will try to help you out
09:49:05 7 with some reasonable factual stipulations. But, you know, in
09:49:12 8 exchange for that, you know, you will agree to the same
09:49:15 9 document request that you agreed to with Ms. Rutherford without
09:49:19 10 stipulations. So I think we've gone the extra mile here.

09:49:26 11 THE COURT: Let me ask you something real quick. I'm
09:52:36 12 thinking about the order, though, that I'm going to be working
09:52:39 13 on today and maybe a bit tomorrow. I'm going to -- I'll get
09:52:45 14 you-all something certainly by the end of the day Friday. But
09:52:48 15 in that order, how do I say -- how do I articulate that
09:52:56 16 Mr. Collins and the Collins Law Firm agree to stipulate, so
09:53:02 17 we're ordering them to stipulate? I just don't see how I can
09:53:06 18 do that. I think I'm back to this RFP in this format is
09:53:12 19 authorized, and that's it.

09:54:53 20 MR. COLLINS: I would agree with you, Your Honor. I
09:55:06 21 certainly will stand by and -- and my client, the plaintiff,
09:55:09 22 will certainly stand by its offer to make the stipulations.
09:55:14 23 But I don't think that it's appropriate that that be included
09:55:17 24 in the order.

09:55:18 25 THE COURT: Right. And so perhaps it's all -- as far

09:55:21 1 as I could go would be to note in a footnote that you have
09:55:25 2 represented that you will make these minimum stipulations.
09:55:30 3 But, again, I can't bind you to that either.

09:57:59 4 MR. COLLINS: I would agree.

09:58:01 5 THE COURT: Okay. All right.

09:58:22 6 MR. COLLINS: It wouldn't be appropriate in the
09:58:25 7 order.

09:58:25 8 THE COURT: Okay. Mr. Grant?

09:58:27 9 MR. GRANT: Thank you, sir. So, Judge, let me
09:59:10 10 address the stipulation issue briefly, and then I think perhaps
09:59:16 11 offer a potential way ahead. With regards to the stipulations,
09:59:20 12 what the Court needs to understand is that they arose in
09:59:23 13 response to representations about, you know, there's going to
10:00:46 14 be a lot of documents regarding the communications between
10:00:51 15 Acacia, Mr. Fischman, and Collins Edmonds. We said, well, if
10:00:56 16 the issue is burdensomeness about the amount of those
10:01:00 17 communications, which of course is relevant -- directly
10:01:03 18 relevant to the issues before Judge Yeakel and the scope of any
10:01:08 19 relief, should he decide relief is warranted, we said we'll
10:01:11 20 then just stipulate to it.

10:01:13 21 I agree that the Court can't require a stipulation.
10:01:15 22 What we did is we just tried to offer that as alternative to
10:01:21 23 discovery. Now, what I think we would ask the Court to do is
10:01:25 24 simply order that the discovery that we think is appropriate,
10:01:29 25 meaning the narrowed up stuff that we've sort of gotten to now,

10:01:33 1 and then that option for stipulation remains available and they
10:01:38 2 can say, well, you know, we'll take the stipulation. We don't
10:01:41 3 want to produce the documents. But I agree with the Court.
10:01:44 4 All the Court can do is order discovery to proceed.

10:01:47 5 If I may, Your Honor, there's sort of four issues
10:01:51 6 that I think if we just get the Court's guidance on, we could
10:01:55 7 take a break and I think the parties would hash out what
10:01:59 8 remains because, as the Court noted, we've been working real
10:02:03 9 hard and both sides have been working hard to try to narrow
10:02:06 10 this up and get us to where we ought to be in order for
10:02:10 11 Judge Yeakel to make an appropriate decision on the record.

10:02:13 12 And so now we sort of have a limited number of issues
10:02:17 13 that if you, I think, tell us this is where I'm likely to go,
10:02:22 14 we'll get to a result that's probably agreed upon.

10:02:27 15 THE COURT: Well, I'll tell you, you're -- you're
10:02:30 16 getting on to the second issue which was I was going to
10:02:33 17 challenge you-all to give me a path that I can take to try to
10:02:40 18 resolve this. So if you've got a four-issues path, let's
10:02:45 19 explore it.

10:02:46 20 MR. GRANT: Yes, sir. Absolutely. So, first of all,
10:02:49 21 the issue with Rutherford, the scope of her stuff is different.
10:02:52 22 And so I don't think the deal that was reached with
10:02:56 23 Judge Ellison last week is relevant here. So it was first --

10:02:58 24 THE COURT: It strikes me as a little relevant.

10:03:01 25 MR. GRANT: Well, it's a little relevant but not

10:03:04 1 entirely relevant, Your Honor.

10:03:05 2 THE COURT: Okay.

10:03:06 3 MR. GRANT: The stuff that's different is important.

10:03:08 4 And, really, our objective here, Your Honor -- and I think, you
10:03:11 5 know, some of what we've seen is editing of the stipulations.

10:03:16 6 You know, they say, well, we won't stipulate to that, but we'll

10:03:19 7 stipulate to this. I want to be crystal clear what our

10:03:22 8 objective is. Whatever Judge Yeakel decides, I'm confident and

10:03:28 9 Mr. Collins has said that, you know, it's going to end up being

10:03:32 10 appealed. So the whole question is, how do we give

10:03:37 11 Judge Yeakel the record that he needs to write an opinion that

10:03:41 12 will be adequately supported?

10:03:44 13 And so if we start twiddling with the stipulations,

10:03:48 14 then I think we need the discovery so that the judge can write

10:03:52 15 a fact-based opinion that's going to get some deference. And

10:03:55 16 if we have a stipulation, it's got to be a strong one because,

10:04:00 17 otherwise, I don't think that's going to get much deference if

10:04:03 18 it's reviewed.

10:04:04 19 So with regards to the stipulations, Your Honor,

10:04:07 20 that's an alternative discovery. That's completely between the

10:04:11 21 parties. And the Court should just understand that in terms

10:04:15 22 of -- in terms of context. It was something we offered as an

10:04:18 23 alternative so that the judge could say, well, that element of

10:04:23 24 the controlling law is met and I don't have to go into the

10:04:26 25 facts.

10:04:27 1 With regard to the subpoenas, part of what
10:04:32 2 Mr. Collins and his firm has asked is that we withdraw
10:04:37 3 subpoenas. I don't have any concern about the documents being
10:04:45 4 produced by the party in a best position to produce them. But
10:04:49 5 I don't think those subpoenas can be withdrawn until the
10:04:52 6 documents are produced and we know there's no further
10:04:55 7 squabbling because the Court needs to retain jurisdiction to
10:04:59 8 say, you know what? I've seen what Acacia has produced and I
10:05:06 9 don't think it's efficient and now I'm going to enforce that
10:05:09 10 subpoena against the Collins Edmonds firm.

10:05:11 11 So I think if the court says, yeah, we're not going
10:05:14 12 to need to withdraw any subpoenas, we're fine with the party
10:05:17 13 who's best situated producing the documents. But those
10:05:20 14 subpoenas need to remain in effect and we need a representation
10:05:23 15 that, you know, the party that produced the documents has
10:05:29 16 produced everything we would have or something to that effect.

10:05:32 17 The next issue has to do with these organizational
10:05:35 18 documents from the Acacia's entities, Your Honor. I don't
10:05:38 19 think we're too far apart on that. But this is the kind of
10:05:42 20 stuff that's produced every day, and it's particularly
10:05:45 21 important, as the Court saw from the background of this case,
10:05:48 22 where we have, you know, an entity that was formed that has no
10:05:53 23 assets other than the patents; that Mr. Fischman is a vice
10:05:57 24 president of an entity two levels up; he's the corporate
10:06:01 25 representative for that plaintiff; you know, the intermediate

10:06:06 1 corporate entity is the only member of that LLC. So I think
10:06:09 2 that couldn't be more straightforward. It's produced in
10:06:15 3 commercial litigation all the time. And I think if the Court
10:06:18 4 says, yeah, those are going to get produced, then we'll be able
10:06:21 5 to figure out a proper scope.

10:06:24 6 And then the last thing, Your Honor, is timely
10:06:27 7 production. As the Court probably knows, you know, that
10:06:31 8 hearing where Judge Yeakel authorized discovery was August
10:06:34 9 12th. The response brief was filed, I think, in early
10:06:40 10 September and, you know, pretty quickly thereafter we filed a
10:06:44 11 subpoena. So I think we just need to make sure that whatever
10:06:49 12 we get, we get it in time that we have a fair period -- it
10:06:55 13 doesn't have to be a week, but a fair period -- to consider
10:06:58 14 that and get it in front of Judge Yeakel so he can consider it
10:07:02 15 on the 20th.

10:07:04 16 THE COURT: By what time? When do you need it?

10:07:07 17 MR. GRANT: So, Your Honor, I think if we had it
10:07:10 18 seven days before that, so that would be one week from Friday,
10:07:14 19 then that gives us enough time to review the documents over the
10:07:17 20 weekend, get a submission to Judge Yeakel -- let's call it by
10:07:22 21 Tuesday -- and gives the Court time to figure out when he shows
10:07:29 22 up on Friday whether he has questions about them or not. I
10:07:33 23 mean, to me we just have to go backwards from how much time
10:07:36 24 does the Court need. I think the Court needs probably three
10:07:40 25 days to consider those documents.

10:07:41 1 THE COURT: At least.

10:07:43 2 MR. GRANT: Yeah. At least. So, you know, I -- I
10:07:46 3 hear the Court. But, you know, part of that concern I have is,
10:07:49 4 you know, I think the most recent proposal was, well, we'll
10:07:53 5 produce documents in two weeks. Well, the hearing is in two
10:07:56 6 weeks and a day. So, you know -- and we've all been working on
10:08:00 7 this for a while. So that production, once the Court orders
10:08:04 8 it, should be able to occur fast because everybody knows what
10:08:10 9 we've been negotiating about. And I would think that, to the
10:08:13 10 extent that production is readily accessible -- and it should
10:08:18 11 be by now because everybody's been working on this for six
10:08:21 12 weeks -- that it should be ready to go pending on whatever the
10:08:25 13 Court's ruling is on scope.

10:08:27 14 THE COURT: Okay.

10:08:28 15 MR. GRANT: So I think if we get the Court's guidance
10:08:31 16 on these issues, what I would propose is let's take a 30-minute
10:08:36 17 break and see if the parties work it out.

10:08:39 18 THE COURT: Okay. Mr. Collins?

10:08:48 19 MR. COLLINS: Just a few brief remarks, Your Honor.
10:08:51 20 With regard to the four issues, I would submit to you that the
10:08:57 21 agreement that Schlumberger reached with Ms. Rutherford is
10:09:02 22 highly relevant. I agree with the Court on that. She is,
10:09:06 23 after all, the primary target of the disqualification motion.
10:09:11 24 And the central issue in the disqualification motion is whether
10:09:15 25 something she worked on at Schlumberger is substantially

10:09:18 1 related to the issues in the patent suit. So, to me, the
10:09:25 2 agreement that Schlumberger made with Ms. Rutherford is the
10:09:33 3 baseline of what they really think they need.

10:09:38 4 THE COURT: And, for instance, as you approach your
10:09:40 5 proposals, does it incorporate those dates and whatnot that
10:09:47 6 were reached in the Southern District?

10:09:50 7 MR. COLLINS: Your Honor, my proposals track almost
10:09:52 8 identically for all of my clients the agreement that
10:09:57 9 Schlumberger reached with Ms. Rutherford.

10:10:05 10 THE COURT: Okay.

10:10:06 11 MR. COLLINS: I agree that factual stipulations in
10:10:09 12 theory can be alternative to discovery, but we don't want to
10:10:15 13 leave factual stipulations just open and continue that warfare
10:10:22 14 and have the threat of more discovery hanging over our head if
10:10:27 15 they don't get what they believe they're entitled to in the way
10:10:33 16 of factual stipulations. And I think the subpoenas should be
10:10:39 17 withdrawn. I think they --

10:10:40 18 THE COURT: Yeah. Tell me -- I have to admit
10:10:42 19 ignorance here. What is the significance? Why is that a big
10:10:47 20 deal?

10:10:47 21 MR. COLLINS: Well, if -- they don't have to be
10:10:49 22 withdrawn if the Court clearly issues an order saying they're
10:10:54 23 modified in this regard.

10:10:55 24 THE COURT: That's what I'm intending to do. I mean,
10:10:59 25 if you-all -- I would welcome a break and the last-minute

10:11:02 1 opportunity for you-all to fix this. I'm not going anywhere
10:11:07 2 today. It would save me a tremendous amount of time. But
10:11:11 3 assuming that you can't, I think that's what I have to do.

10:11:16 4 MR. COLLINS: Yes, Your Honor. And we have no issue
10:11:18 5 with that. I believe you're absolutely right.

10:11:24 6 THE COURT: Okay.

10:11:25 7 MR. COLLINS: And, you know, as far as organizational
10:11:27 8 documents from Acacia, I'm going to defer that and let one of
10:11:34 9 the lawyers for Acacia speak, with the Court's permission.

10:11:37 10 THE COURT: Yes. Because I have to admit that's the
10:11:40 11 one that I don't understand why there's a big brouhaha on that
10:11:44 12 one, but I'm sure we'll hear why in a minute.

10:11:49 13 MR. COLLINS: And with respect to time of production,
10:11:51 14 Your Honor, I have to say, with all due respect, we included a
10:11:55 15 lot of evidence in our original motions, which I don't want to
10:11:58 16 rehash, about how burdensome it would have been and how many
10:12:02 17 files would have had to have been searched. The time of
10:12:06 18 production largely depends on what the Court orders us to
10:12:10 19 produce.

10:12:12 20 If we can get by with producing just the documents
10:12:22 21 that they've agreed to with Ms. Rutherford and -- or in our
10:12:28 22 proposal to them, then it's much less of an issue. I will say
10:12:33 23 this, though: One of the subpoenas is directed to Austin Geo.
10:12:37 24 The others -- the others are directed to me and my firm.
10:12:41 25 There's a request for production to the plaintiff. Not

10:12:47 1 coincidentally, the date they've asked for compliance is next
10:12:51 2 Wednesday, the 12th. That's the same day that we have the
10:12:55 3 technology tutorial before Judge Yeakel. That's going to be a
10:13:03 4 tutorial that both Mr. Grant and I are going to participate in.
10:13:07 5 Our teams are working on that.

10:13:10 6 My primary presenter is Robin Dommissie, the CEO of
10:13:16 7 Austin Geomodeling, and Mr. Dommissie is in South America right
10:13:21 8 now. I think I -- and I told them that we could produce --
10:13:28 9 that AGM could produce documents to them by next Friday, which
10:13:35 10 is -- I think that's probably acceptable. I represented
10:13:42 11 that -- that the plaintiff could produce documents to
10:13:52 12 Schlumberger along with a privilege log within 14 days.

10:13:55 13 And it -- I -- I use that time because most of what
10:14:04 14 is going to be produced, which would be from not only the
10:14:10 15 plaintiff's files, but my law firm's files, is going to be
10:14:13 16 attorney work product; a lot of it, if not most of it, is going
10:14:18 17 to be privileged; and there's going to be an extensive
10:14:27 18 privilege log.

10:14:27 19 And while I'm at it, I think the other point I would
10:14:30 20 note is that since Dynamic 3D Geo has agreed to produce
10:14:35 21 documents from my firm's files along with their own files,
10:14:40 22 there's no need for these subpoenas to Collins Edmonds or me
10:14:44 23 individually and there's no need to require us to make any fact
10:14:49 24 stipulations. They can get everything they need from the files
10:14:54 25 of both my law firm and my client in their request for

10:14:59 1 production from my client.

10:15:02 2 THE COURT: Okay.

10:15:04 3 MR. COLLINS: And, if I may, I would like just to
10:15:06 4 have one of -- I'm not sure who will address it, but it may be
10:15:12 5 Mr. Brennan -- address the documents that Schlumberger is
10:15:19 6 seeking regarding Acacia's organizational structure.

10:15:23 7 THE COURT: Okay. Yeah. Let's talk about that.

10:15:27 8 MR. BRENNAN: Thank you, Your Honor. Acacia Research
10:15:31 9 Group LLC, which is the company that employs both my other
10:15:38 10 client, Gary Fischman and Ms. Rutherford, is the parents of the
10:15:46 11 plaintiff in this case, Dynamic 3D. Dynamic 3D is its wholly
10:15:51 12 owned subsidiary. If -- if what the other side is asking for
10:15:57 13 is some kind of chart that substantiates the corporate
10:16:04 14 relationship between those entities and the individuals that
10:16:11 15 worked on behalf of those entities, to the extent that those
10:16:15 16 individuals' names come up on a privilege log that we produce,
10:16:24 17 we're happy to do that if we're talking about issues that
10:16:28 18 relate to the '319 patent and this litigation. I understand
10:16:33 19 that they're asking for more than that. It's not entirely
10:16:36 20 clear to me exactly what more they're asking for at this point.

10:16:41 21 THE COURT: Okay. Let's find out.

10:16:44 22 MR. BRENNAN: Let's find out.

10:41:32 23 MR. GRANT: Yes, sir. So when you say '319 patent, I
10:41:40 24 think we have to mean the '319 patent litigation. So part of
10:41:46 25 the issue, Your Honor, is they sued us and a bunch of other

10:41:50 1 companies in what are technically separate suits that are all
10:41:53 2 about the same assertion of infringement. And the substantial
10:41:59 3 relationship is relevant because, for example, Halliburton has
10:42:03 4 cited our earlier product as prior art in their case. So it
10:42:11 5 can't possibly be the case that Ms. Rutherford or the Acacia
10:42:19 6 persons can create a wall and say, Well, we didn't work on the
10:42:23 7 Schlumberger case regarding our defense to that claim of patent
10:42:26 8 invalidity which is based on the Schlumberger product. We only
10:42:31 9 worked on the Halliburton case. It's the same analysis. So I
10:42:35 10 think as long as when we say the '319 patent, we mean the '319
10:42:40 11 patent litigations that are pending, then I -- then I think
10:42:46 12 we're on the same page.

10:42:49 13 Can I briefly respond to the Rutherford question,
10:42:53 14 because the question you asked is a fair one, Your Honor, which
10:42:56 15 is how similar is it? So part of what Judge Yeakel has to do
10:43:00 16 is a couple of steps. One, he has to make that decision about
10:43:04 17 whether the case is substantially related to her work. That's
10:43:09 18 really what the Rutherford discovery is about. If he makes the
10:43:13 19 decision that that work is substantially related, then the
10:43:19 20 discovery we're seeking here that goes beyond the Rutherford
10:43:23 21 discovery is directly necessary for Judge Yeakel to form a
10:43:27 22 remedy.

10:43:28 23 THE COURT: So why shouldn't we just shut this whole
10:43:32 24 thing down and resolve that first question first?

10:43:35 25 MR. GRANT: That's up to Judge Yeakel. And if

10:43:38 1 Judge Yeakel says, let's have two DQ hearings. Let's have a DQ
10:43:43 2 hearing on whether there's a substantial relationship, and then
10:43:47 3 let's have a second one about the level of imputation that's
10:43:50 4 involved, you know, Your Honor, I don't think I have a problem
10:43:53 5 with that.

10:43:53 6 THE COURT: If we do that, how -- how -- how does
10:43:59 7 that affect the request for production that you've got? I
10:44:02 8 mean, does it reduce it to one or two or it is satisfied with
10:44:08 9 Rutherford's production out of the Southern District.

10:44:11 10 MR. GRANT: I don't think it's completely satisfied,
10:44:14 11 but it takes care of a lot of the issues because a lot of the
10:44:18 12 issues we're dealing with here, Your Honor, is how much of her
10:44:21 13 conflict is imputed to Acacia, whether Acacia qualifies as a
10:44:26 14 firm under the ADA and Texas rules, whether that imputation and
10:44:32 15 those communications between Acacia and Mr. Collins and his
10:44:37 16 firm, what's the level of communication there, whether there's
10:44:42 17 a next step imputation as to -- as to him and, you know, what
10:44:49 18 the level of involvement was in the decisions to acquire the
10:44:55 19 patent.

10:44:55 20 So, I agree with you, sir. It's a two-step process,
10:45:02 21 but Judge Yeakel didn't structure the hearing that way. He
10:45:07 22 told us to be prepared to argue everything, and he told us to
10:45:10 23 conduct discovery to be prepared.

10:45:13 24 THE COURT: Yeah. And that's, by the way, our
10:45:15 25 problem with time crunch here. I -- the way it works is

10:45:20 1 district judges tell magistrates what to do. It doesn't go the
10:45:24 2 other way. So I'm like you-all. I'm working within that same
10:45:31 3 time frame. I can't move things. I don't even think I can
10:45:34 4 narrow the issues --

10:45:35 5 MR. GRANT: And I think, Your Honor --

10:45:37 6 THE COURT: -- if I want to.

10:45:38 7 MR. GRANT: And I think, Your Honor, in the end, you
10:45:41 8 know, Judge Yeakel needs a full record to decide the case. And
10:45:46 9 the -- the addition -- I think at this stage, you know,
10:45:52 10 respectfully, I would err in the direction of slightly broader
10:45:55 11 discovery because I think we've narrowed it up substantially.
10:45:59 12 Because, in the end, if that discovery is relevant, it's going
10:46:02 13 to be before Judge Yeakel. And if he thinks it's relevant,
10:46:07 14 it's going to be cited in his opinion. And if he thinks it's
10:46:11 15 relevant and cites it in his opinion, it's going to be reviewed
10:46:15 16 by the Federal Circuit. And, you know, I think that's what
10:46:20 17 both -- as officers of the court, both sides' lawyers are
10:46:25 18 obligated to give Judge Yeakel what he needs to make a full and
10:46:29 19 fair decision. And so that's what this is about.

10:46:33 20 THE COURT: Well, it is -- clearly it's about what he
10:46:35 21 needs, and whatever he needs has got to be relevant, it's got
10:46:39 22 to be reasonable. You know, I am a little troubled by the law
10:46:43 23 firm subpoenas to Mr. Collins and his firm because it's, like
10:46:53 24 we just talked about, first you've got -- you have work to do
10:46:58 25 with Rutherford first, and we're kind of blowing right by that

10:47:08 1 and we're getting right into the law firm.

10:47:10 2 MR. GRANT: No, sir. No, sir. We're not blowing
10:47:16 3 right by that. It's just that that information is information
10:47:18 4 that we, in part, have from public records regarding her prior
10:47:22 5 deposition and, in part, are now going to get directly from
10:47:26 6 her. And it's information that's within the control of
10:47:30 7 Schlumberger, right? So the information about whether her work
10:47:34 8 on this '319 patent and the accused product is substantially
10:47:39 9 related, that's within our custody or control. We're the ones
10:47:42 10 who get to say, you know, here's the accused product. Here's
10:47:48 11 the prior art product. They're identical. This one is
10:48:03 12 invalidating to this one. So that information is within our
10:48:14 13 custody or control. To the extent there's minor additional
10:48:19 14 stuff, that's the stuff that was taken up with Judge Ellison
10:48:22 15 last week.

10:48:22 16 The next two steps are particularly important. The
10:48:26 17 first one has to do with the irrebuttable presumption of
10:48:32 18 imputation to the firm, right? So now the only question is:
10:48:35 19 How broad is this that within Acacia? And, as we mentioned,
10:48:39 20 they have various entities and are entitled to do that under
10:48:43 21 the law. But we need to understand those communications and
10:48:46 22 those relationships because we believe, if you consider what
10:48:49 23 the entity is set up to do and, for example, the fact that its
10:48:53 24 CEO was the person who, on Mr. Collins' recommendation and on
10:49:00 25 Ms. Rutherford's recommendation, made the decision to sue.

10:49:03 1 If she's conflicted out, then under the controlling
10:49:07 2 law, all of Acacia is conflicted out. They have lawyers acting
10:49:12 3 in VD, they've got lawyers acting in lawyer. But that's what
10:49:16 4 the discovery as to the Acacia entities is into.

10:49:18 5 Now, the next stuff is there is a rebuttable
10:49:22 6 presumption with regards to outside counsel. And I think
10:49:24 7 that's resolved, Your Honor, by the stipulation which just says
10:49:30 8 we have lots of substantive communications with Acacia about
10:49:36 9 this case. I mean, that's really all we're looking for.

10:49:39 10 THE COURT: That's what you think happened. Their --
10:49:43 11 their pleadings they say that did not happen.

10:49:46 12 MR. GRANT: And that's why we need the discovery,
10:49:50 13 Your Honor. Because if we have a privilege log that shows, I
10:49:53 14 don't know, 300 entries of e-mails and communications with
10:49:56 15 Mr. Fischman and other people at Acacia and the Collins Edmonds
10:50:02 16 firm regarding the lawsuit --

10:50:03 17 THE COURT: Well, what would be wrong with that? I
10:50:06 18 mean, I guess I'm focused on Rutherford here.

10:50:09 19 MR. GRANT: Yes, sir.

10:50:09 20 THE COURT: And that's --

10:50:13 21 MR. GRANT: There's nothing wrong, Your Honor. But
10:50:15 22 what the law is, she has confidential, privileged information
10:50:20 23 that she's used against us. Under the law, that's imputed to
10:50:26 24 all her colleagues at Acacia. That's the law. So that
10:50:31 25 confidential information of a lawyer's obligations to their

10:50:54 1 client which, you know, I think are pretty serious.

10:50:58 2 THE COURT: See, what you're talking about, those are
10:50:59 3 issues that Judge Yeakel is going to resolve. I appreciate
10:51:03 4 you're advocacy, but I've read the plaintiff's side of this and
10:51:07 5 they take issue with your characterization of the case is
10:51:10 6 imputable, the impact of the Bar rules. I mean, that's for
10:51:18 7 Judge Yeakel. What I want to focus on is what is relevant
10:51:21 8 here. And my one concern is, I think that anything that
10:51:27 9 Rutherford is involved in as it relates to, certainly
11:08:05 10 Schlumberger, is fair game. Anything Rutherford is involved in
11:08:12 11 as it relates to the '319 litigation, I understand your
11:08:16 12 argument, but I do wonder why she can't be involved in the
11:08:24 13 Halliburton litigation.

11:08:25 14 MR. GRANT: Because, Your Honor, it's substantially
11:08:28 15 related to the work she did for us. And if she helps form, for
11:08:32 16 example, the response to Halliburton's invalidity claims,
11:08:39 17 that's the same response that's going to come to our invalidity
11:08:45 18 claims because it's based on our prior art product that she was
11:08:50 19 responsible for and worked on as a lawyer at Schlumberger.

11:08:57 20 It's no different than you being a partner at a law
11:09:00 21 firm and being involved in a product liability case as to a
11:09:07 22 specific accident suing the company that runs the plant and
11:09:14 23 then separately saying, well, we're also suing the company that
11:09:20 24 makes the product. And all the facts and everything else is
11:09:22 25 the same and you say, well, we previously represented the

11:09:25 1 person that runs the plant. So I'm not going to be involved in
11:09:28 2 that. But I'm going to be involved in the litigation against
11:09:30 3 the company that made the product. It's exactly the same
11:09:33 4 facts.

11:09:35 5 THE COURT: But they've got a case -- and I'll get
11:09:37 6 half of this right -- involving somebody who worked for an
11:09:40 7 appraisal board and then left after 20-something years, turned
11:09:45 8 right around and sued the county on behalf of clients. And,
11:09:48 9 again, this is kind of the same thing, isn't it?

11:09:51 10 MR. GRANT: Well, so, Your Honor, I think it's
11:09:53 11 different. That case is quite distinguishable. But, in the
11:09:59 12 end, Judge Yeakel will decide whether they're right on the law
11:10:02 13 or we're right on the law. If he decides we're right on the
11:10:07 14 law, then he needs the facts to figure out what the remedy is.

11:10:15 15 Now, you may be right, Your Honor. They may produce
11:10:18 16 these facts, Judge Yeakel may think we're wrong on the law, and
11:10:39 17 he may say none of this matters. But what if that doesn't
11:10:42 18 happen? What if Judge Yeakel says, you know what? I agree
11:10:45 19 with Schlumberger's view of the law. How come I don't have any
11:10:50 20 information on the communications between Acacia's in-house
11:10:53 21 people and the Collins Edmonds firm? Where is that?

11:10:58 22 And you know, if the Court wants to reject our
11:11:03 23 request for that information, I appreciate that. But then I
11:11:06 24 have to have a record where I can go to Judge Yeakel, and say,
11:11:11 25 Judge Yeakel, we asked if that information. We -- we -- it was

11:11:16 1 subject to, effectively, a motion to compel, a motion to quash,
11:11:20 2 and your colleague rejected that and we think we're entitled to
11:11:26 3 that. And that might be a basis for us -- for our cross-appeal
11:11:31 4 if he says, well, Rutherford's conflicted, but I'm not going to
11:11:37 5 take the law firm out of it.

11:11:38 6 THE COURT: Is -- help me understand the one, two,
11:11:42 7 three primary -- as you-all have gotten closer to an agreement
11:11:47 8 on which RFPs you're going to agree on, what are the remaining
11:11:55 9 big issues that -- that I need to decide? And that's against a
11:12:00 10 backdrop that I note, for instance, in one of these
11:12:04 11 productions, three, four, and five, there's nothing there.
11:12:07 12 It's like we're not going to do that one anymore. But to the
11:12:10 13 extent that we're not going to do three, four, or five being
11:12:14 14 based on a stipulation of facts, which we all agree on I can't
11:12:18 15 go into --

11:12:19 16 MR. GRANT: Yes, sir.

11:12:20 17 THE COURT: -- are three, four and five back on the
11:12:23 18 table?

11:12:24 19 MR. GRANT: So I think the answer to that is yes.
11:12:26 20 But with my apologies, Your Honor, I just finished a jury trial
11:12:30 21 in Delaware, so I'm going to ask my colleague, Mr. Connolly,
11:12:34 22 who has been doing the negotiations and is more deeply involved
11:12:38 23 to handle the specifics of the request and where we
11:12:41 24 specifically are in the negotiations, if that pleases the
11:12:44 25 Court.

11:12:45 1 THE COURT: Absolutely.

11:12:46 2 MR. GRANT: Thank you, sir.

11:12:47 3 MR. CONNOLLY: Thank you, Your Honor.

11:12:51 4 Terrence Connolly. Thanks for having us here today,
11:12:54 5 Your Honor. We appreciate your time. With respect to your
11:12:56 6 specific question, Your Honor, and this -- and this proves that
11:13:01 7 we have been treating these parties separately and seeking the
11:13:05 8 information and the stipulations from different parties.

11:13:49 9 The answer to your question is: We have withdrawn,
11:13:54 10 without condition, several of the requests that are directed at
11:13:58 11 Austin Geomodeling. That is the original assignee of the
11:14:03 12 patent. Okay? So when you saw those withdrawn in the book,
11:14:11 13 those were not subject to any stipulation.

11:14:13 14 However, the requests 3 and 4 that are directed at
11:14:21 15 the Collins Edmonds firm and Mr. Collins, those -- those
11:14:25 16 requests and the narrowing that we did, which very, very, very,
11:14:31 17 narrowly cabined-in time frames in response to statements we
11:14:36 18 can't -- you know, if you -- if you ask us for everything after
11:14:41 19 the filing of the complaint, there will be -- I'll have a
11:14:45 20 privilege log with hundreds, if not thousands, of documents.
11:14:48 21 Okay. That's fine. Go ahead and stipulate to it, and we won't
11:14:53 22 put you through the paces.

11:14:54 23 But I want Your Honor to understand that the argument
11:14:57 24 about -- about we didn't insist upon Ms. Rutherford's
11:15:03 25 stipulation, we asked Ms. Rutherford to stipulate that she

11:15:08 1 interviewed before she left Schlumberger. We didn't ask her
11:15:12 2 anything about communications among Acacia. We asked her what
11:15:15 3 she was going to know about. We concluded based upon the
11:15:18 4 negotiations that we were having with her the two stipulations
11:15:22 5 that we had asked her about, totally different from these
11:15:26 6 stipulations, weren't necessary in order to get the deal done.

11:15:29 7 So to say -- to say, you know, you gave up on
11:15:34 8 stipulations over there is fine. Your Honor, I just want to
11:15:37 9 make this crystal clear. We made -- we didn't demand the
11:15:43 10 stipulations. We offered the stipulations because we were met
11:15:46 11 with an argument that your requests are incredibly burdensome
11:15:51 12 because all of this stuff is privileged. And, you know, you
11:15:54 13 get -- you're trying to get into all of our litigation
11:15:58 14 strategy, et cetera, et cetera.

11:16:01 15 Frankly, in an effort to try to resolve it and not --
11:16:06 16 I don't need a privilege log of a 100,000 pages. I don't want
11:16:13 17 a privilege log of 100,000 pages. Our response when
11:16:16 18 Mr. Collins suggested, that was okay. Then just tell us -- you
11:16:21 19 know, stipulate that you've had -- you have those -- you've had
11:16:26 20 lots of conversations with the people at Acacia about this
11:16:31 21 lawsuit because that's what's necessary when you get to steps
11:16:34 22 two and three.

11:16:34 23 And, Your Honor, the -- it's a little bit of an odd
11:16:38 24 duck, but understand that -- the first question is, is it
11:16:46 25 substantially related or not. And that's what we focused on

11:16:49 1 our discussions with Ms. Rutherford about. We took discovery
11:16:53 2 on that. We took -- and she gave a deposition and answered
11:16:57 3 questions with respect to the -- the question of her
11:17:04 4 participation and Acacia's -- her new employer's decision to
11:17:12 5 buy the patent and she concurred in the decision to sue her
11:17:15 6 former client. So we think we've got that. We don't really
11:17:18 7 think there's a whole lot about that. They want to talk about
11:18:09 8 old version of Petrel versus the new version of Petrel. But
11:18:22 9 Judge Yeakel is going to decide that.

11:18:24 10 But -- and this is set out in our disqualification
11:18:30 11 motion. That's the first step of the process. But then the
11:18:33 12 next step is, because of -- because the triggering mechanism is
11:18:38 13 substantial relationship, the next question then becomes, okay,
11:18:43 14 everybody in that -- if it were a law firm, everybody in the
11:18:47 15 same law firm, under Texas applicable Fifth Circuit law, is
11:18:54 16 automatically disqualified. So we've been met with an
11:19:00 17 argument, well, it's just the -- you know, it's the plaintiff
11:19:05 18 in the case. Plaintiff 3D. And, of course, Plaintiff 3D
11:19:10 19 didn't exist until a week before the patent was -- the patent
11:19:17 20 suit was filed. So we're not going to just define the law firm
11:19:20 21 as being the -- the wholly owned subsidiary of ARG. And we
11:19:26 22 know that the actual CEO of the very parent company
11:19:31 23 participated in this decision. So we need to figure out what
11:19:34 24 is the -- we need to -- not we need. Judge Yeakel needs to
11:19:38 25 figure out the definition of where is this law firm.

11:19:43 1 And so the stipulations that we were asking were
11:19:45 2 intended to say, okay. We'll give you these very narrow dates,
11:19:50 3 six months. We -- we will limit our document requests to a
11:19:55 4 six-month period, a nine-month period, et cetera. And, by the
11:19:58 5 way, if what you're telling us is true, that, for example,
11:20:01 6 Mr. Collins says, I didn't do any -- he submitted a declaration
11:20:06 7 in opposition to the motion for disqualification. So that's
11:20:10 8 another distinguishing factor, Your Honor. Mr. Collins has
11:20:13 9 made himself a fact witness in the case, and he specifically
11:20:16 10 disagreed with Ms. Rutherford's sworn testimony about what he
11:20:21 11 did and didn't do.

11:20:23 12 So we submitted a declaration -- a subpoena to him
11:20:27 13 that says -- basically, designed to test the veracity of his
11:20:32 14 declaration. I agree with you. It's -- it's an unusual thing,
11:20:37 15 Your Honor. I don't every day serve subpoenas on those people.
11:20:40 16 But that's -- that's what that's directed to.

11:20:43 17 The -- the question of why -- why do we care beyond
11:20:48 18 Ms. Rutherford and Acacia, why do we care about Mr. Collins, is
11:20:53 19 because, again, not the kind of thing that lawyers deal with
11:20:59 20 every day. Under the ethical rules, there are a subset of
11:21:04 21 rules in the Fifth Circuit specifically articulated in this
11:21:08 22 *American Home Products* case which define that, when it is
11:21:15 23 proper to also impute or direct and disqualify outside counsel.
11:21:25 24 As Your Honor might imagine, it's either -- there is a higher
11:21:30 25 burden to disqualify outside counsel.

11:21:32 1 And so when we're seeking information on -- with
11:21:37 2 respect to Mr. Collins' participation, it's not designed to get
11:21:43 3 into the substance of his thoughts. It's designed to either
11:21:49 4 give us -- the easy way to do it is a log that says, yeah, I'm
11:21:55 5 litigating these cases on this same patent with these same
11:22:01 6 issues with the following groups of lawyers at the Acacia
11:22:06 7 entities, which would allow us to then say to the judge, under
11:22:10 8 the *American Home Products*, that qualifies.

11:22:13 9 And, by the way, the language that we've used is
11:22:16 10 verbatim out of those cases. It's not argumentative. It says,
11:22:20 11 In the *American Home Products* case, there is two flavors in the
11:22:25 12 way that you can disqualify outside counsel, different rules
11:22:29 13 with respect to outside counsel and in-house counsel. Of
11:22:32 14 course, the automatic imputation rule doesn't apply. Flavor
11:22:54 15 one is there has to be substantive conversations. That's the
11:22:58 16 word that we used. Your Honor, if we -- I could point you to
11:23:03 17 the paragraph in the case where it came out of.

11:23:07 18 So I understand that it seems this is a little bit of
11:23:11 19 an unusual thing to say, well, why do you need all of this?
11:23:15 20 It's because that's what the case law says.

11:23:18 21 THE COURT: Well, I hear you. I guess against all
11:23:20 22 this backdrop is when you talk or when Mr. Collins talks or
11:23:24 23 Mr. Grants talks, I believe you-all are always telling me the
11:23:28 24 truth. Mr. Collins has filed pleadings -- he's filed an
11:23:33 25 affidavit in which he said these things didn't happen. The

11:23:37 1 search for a -- documents from his own firm that suggests
11:23:44 2 otherwise, basically "veracity," is a nice way of saying he's
11:23:49 3 not telling the truth. He's a liar. Do you have anything to
11:23:52 4 indicate that he's a liar?

11:24:08 5 MR. CONNOLLY: I just have Ms. Rutherford. A, we
11:24:25 6 have Rutherford's testimony. B, we have the -- some of the
11:24:39 7 stipulations. We have admissions of Mr. -- of ARG and ARG's
11:24:46 8 Mr. Fischman, who is also a client representative, that says
11:24:50 9 he's driving this litigation. So -- so what -- whether or
11:24:55 10 not -- and it's not just about that. It's not just about
11:24:59 11 testing the veracity of his statement. Maybe his recollection
11:25:04 12 is correct and hers isn't.

11:25:06 13 If we ask him for all the documents regarding his
11:25:10 14 communications with her and the answer is none, he has nothing
11:25:13 15 to produce and nothing to log. No burden. And we have our --
11:25:18 16 and we have our conclusion. But, Your Honor, we have no other
11:25:24 17 way of testing the veracity. We have a sworn deposition of
11:25:27 18 Ms. Rutherford, who gave the testimony in open court before a
11:25:33 19 state court judge, and then signed her deposition transcript
11:25:37 20 without changing it.

11:25:39 21 And then we have, as Mr. Collins used the word,
11:25:46 22 "misremembered." I don't think we should bear the burden of --
11:25:51 23 of having to assume that one or the other is correct. And, as
11:25:57 24 I said, if his testimony is accurate and he didn't have
11:25:59 25 anything to do with this, the time frames that we've imposed

11:26:05 1 plus the -- we're not asking him to stipulate that he -- that
11:26:08 2 he had those communications with -- with -- you know, that
11:26:12 3 he's -- we haven't asked him to stipulate that his declaration
11:26:16 4 is inaccurate. The stipulations go to other things.

11:26:19 5 And I know -- so that's the position that we're in.
11:26:22 6 But the other stipulations don't just go to the veracity of his
11:26:27 7 declaration. It goes to what -- what is the appropriate scope
11:26:32 8 of relief in the event that Judge Yeakel agrees with us, that
11:26:38 9 the law is X and these are the facts.

11:26:42 10 THE COURT: Okay. I want to hear from Mr. Collins in
11:26:46 11 a moment, but I'll leave you with this: Could an argument be
11:26:49 12 made that your initial subpoenas were so overbroad that I
11:26:53 13 should just limit the issue to whether or not, as they were
11:26:58 14 originally crafted, whether they're appropriate? Because to me
11:27:01 15 that would be an easy call. They're probably way overbroad.
11:27:06 16 Throw them all out and you get no discover because your
11:27:10 17 original subpoenas were too broad.

11:27:12 18 MR. CONNOLLY: Well, first, Your Honor, understand
11:27:15 19 the -- first off, I don't think -- I think judges all the time
11:27:20 20 modify subpoenas. Secondly, it wasn't as if we insisted on --
11:27:28 21 until the eve of last night to negotiate these. The very first
11:27:33 22 time we got notice that -- of what the problems were was when
11:27:37 23 we got hit with a motion to quash. And so we immediately
11:27:43 24 responded by unilaterally modifying the subpoenas to address
11:27:50 25 the very types of things.

11:27:52 1 For example, Your Honor, they took the position
11:27:54 2 that -- and -- and, honestly, the definition of Ms. Rutherford
11:27:57 3 was broad enough to cover her attorneys. Mr. Collins or
11:28:03 4 counsel for Ms. Rutherford pointed out to me that was too broad
11:28:07 5 because it would get into all of her discussions in the state
11:28:10 6 court case. I said, We don't want that. That was
11:28:12 7 unintentional. And I immediately said we will exclude from
11:28:17 8 that definition. That's --

11:28:18 9 THE COURT: I appreciate the reasonableness since
11:28:20 10 then. I'm just commenting that, originally, they were pretty
11:28:26 11 broad.

11:28:27 12 MR. CONNOLLY: This was the issue you, Your Honor:
11:28:29 13 We were told by Judge Yeakel to wait to serve these. We -- we
11:28:35 14 got their papers. We studied them. We did not -- one of the
11:28:43 15 first things, we very carefully considered whether we were
11:28:47 16 taking those positions. We considered burden issues, benefit
11:30:07 17 issues, decided we weren't going to do that. We drafted a set
11:30:10 18 of discovery requests. We had to get them out because of the
11:30:13 19 time frame.

11:30:14 20 THE COURT: Okay.

11:30:15 21 MR. CONNOLLY: And we viewed that as basically the
11:30:18 22 invitation to have the dialogue. Because Part of the problem,
11:30:20 23 Your Honor, is you never know how -- what people have. I was
11:30:23 24 not aware of the fact, for example, that Mr. Collins was going
11:30:28 25 to say to me, I've had -- I think the initial word was

11:30:33 1 "dozens." That's the word that we used in the stipulation
11:30:36 2 because that's the word he used. I've had "dozens" of
11:30:39 3 conversations with Mr. Fischman with respect to the -- this
11:30:47 4 lawsuit and the other lawsuits.

11:30:50 5 And so that's -- so we're -- I -- to be honest with
11:30:55 6 you, Your Honor, I don't think we should be faulted for, in a
11:30:59 7 very short period of time, putting together a set of discovery
11:31:02 8 requests to get the ball rolling and to have the negotiations.

11:31:07 9 THE COURT: I don't mean to imply fault. It's just
11:31:10 10 more of this is against the backdrop that what you-all are
11:31:15 11 essentially asking me to do is try to -- if you talk about a
11:31:18 12 short time frame, I even have a shorter one, try to figure out
11:31:22 13 everything that we've talked about so far and everything that's
11:31:25 14 in your pleadings and come up with something that's reasonable.

11:31:28 15 And it's going to be -- frankly, I can tell you right
11:31:31 16 now, it will be a compromise between what you want, what they
11:31:37 17 don't want you to have, and it's going to end up making both
11:31:40 18 sides unhappy. That's my prediction. But let me hear from
11:31:46 19 Mr. Collins.

11:31:55 20 MR. GRANT: Sure. Thank you, Your Honor.

11:31:57 21 MR. COLLINS: Thank you, Your Honor. I do want to
11:31:59 22 clear up what I think may be some misconceptions. The six
11:32:03 23 patent cases are related only in that my client, Dynamic 3D
11:32:12 24 Geo, is suing on the same patent. We're talking about these
11:32:17 25 other five cases being against Schlumberger's competitors.

11:32:21 1 We're talking about the five other cases involving completely
11:32:25 2 different products. Now, the infringement analysis is going to
11:32:30 3 be completely different in each of those cases, and nothing
11:32:35 4 that Ms. Rutherford knows that she learned from Schlumberger is
11:32:40 5 going to be of much use.

11:32:41 6 Now, Mr. Grant brings up the prior art. Well, the
11:32:48 7 prior art is a matter of public record. Halliburton cited
11:33:10 8 Schlumberger's Petrel product because they know a lot about it.
11:33:14 9 Indeed, it's a public product. It's out there. Anyone can buy
11:33:17 10 it and run it on their computer that wants to pay for it. It's
11:33:22 11 also cited in Halliburton's filing for an inter partes review
11:33:28 12 in the United States Patent and Trademark Office. One can go
11:33:32 13 to that Web site and see all of the features of Petrel in a
11:33:38 14 hundred-page claim chart.

11:33:40 15 So I -- and unless there's some type of secret, which
11:33:47 16 there's not, about Petrel that is going to be important in the
11:33:54 17 prior art analysis and there's nothing that's relevant at all
11:33:59 18 about any of these other five cases.

11:34:04 19 Now, I would like to get back, if we could, to the
11:34:11 20 issues before this court today. Mr. Grant talked about the
11:34:17 21 substantial relationship test, and he conceded that all of that
11:34:20 22 information is in the possession -- well, I think he conceded.
11:34:23 23 I don't want to misconstrue what he said. But let me just say
11:34:31 24 that all of the information that Schlumberger needs is in their
11:34:34 25 own custody and control. We've asked for that information, and

11:34:37 1 they said, no, you can't see it. What she worked on at
11:34:41 2 Schlumberger is privileged. The substantial relationship test
11:34:48 3 simply involves comparing the evidence.

11:34:52 4 THE COURT: I'll interrupt you. I think you're
11:34:54 5 making -- that's a good argument.

11:34:57 6 MR. COLLINS: Okay.

11:34:57 7 THE COURT: And so that will be a good argument for
11:34:59 8 Judge Yeakel.

11:35:00 9 MR. COLLINS: Yes.

11:35:01 10 THE COURT: In terms of his analysis. That point is
11:35:03 11 well taken.

11:35:04 12 MR. COLLINS: Okay.

11:35:05 13 THE COURT: And that's going to be a problem that
11:35:08 14 Schlumberger is going to have. But as it relates to what we're
11:35:11 15 doing here, the substantial relationship test, hasn't Acacia
11:35:18 16 almost conceded that when they -- that there is a substantial
11:35:25 17 relationship here when they -- when they walled her off -- they
11:35:28 18 make a point of saying, we've walled her off from anything to
11:35:34 19 do with Schlumberger?

11:35:36 20 MR. COLLINS: Not at all.

11:35:37 21 THE COURT: Is that purely prophylactic, or is
11:35:41 22 that -- could it be an admission that there's pretty good
11:35:45 23 overlap between the two?

11:35:46 24 MR. COLLINS: It's not an admission, Your Honor. Law
11:35:50 25 firms do that all the time. They put up the ethical wall when

11:35:54 1 they hire somebody from another firm because they know that
11:35:58 2 they had a former client who is adverse to one of their current
11:36:01 3 clients. We had to do that with Mr. Juren when we hired him
11:36:05 4 away because he was opposite me in a patent case in Houston.
11:36:10 5 And so that was all prophylactic, and that's all what this was.

11:36:17 6 If I may, I just want to briefly address discovery
11:36:23 7 from my law firm and the contacts that I've had with Acacia.
11:36:35 8 The issue is actually fairly simple. I know they talk about
11:36:40 9 double imputation, and I know you read our briefing. But they
11:36:43 10 have to show under any theory whether it's Fifth Circuit
11:36:47 11 binding precedent or their Texas law theory that Ms. Rutherford
11:36:54 12 communicated some type of confidential Schlumberger information
11:37:01 13 to us. And that's why we agree that discovery -- you know, for
11:37:09 14 example, requests one and two which seek information about
11:37:16 15 communications between Ms. Rutherford and my firm is entirely
11:37:20 16 appropriate. What we don't agree is appropriate is discovery
11:37:26 17 about what we may have talked about with Gary Fischman at
11:37:31 18 Acacia, who's our primary and virtually only contact.

11:37:35 19 That doesn't have any bearing on whether or not my
11:37:40 20 firm should be disqualified because that turns on the question
11:37:45 21 of whether Ms. Rutherford communicated any confidential
11:37:49 22 information to us. And that's very important to note.
11:37:56 23 Moreover, as we've just talked about in terms of relevance,
11:38:03 24 it's completely irrelevant what my firm may have discussed with
11:38:11 25 Gary Fischman about the other five patent cases.

11:38:16 1 THE COURT: If the RFP is limited to what you propose
11:38:21 2 right there to that, how burdensome is that analysis going to
11:38:26 3 be?

11:38:28 4 MR. COLLINS: The production or the analysis?

11:38:33 5 THE COURT: I guess both. I mean, it all --

11:38:35 6 MR. COLLINS: It does require analysis because we
11:38:37 7 have to look through a lot of things. We can -- we can live
11:38:41 8 with that, Your Honor. It's not as burdensome because if what
11:38:49 9 we've proposed, the stipulations we're willing to agree to and
11:38:53 10 the RFPs that I think we're very close on with Schlumberger, I
11:39:01 11 would think that we could easily do that within the 14 days
11:39:04 12 that we proposed.

11:39:05 13 Now, I realize that the Court is dealing with
11:39:11 14 Judge Yeakel's hearing deadline, but the Court needs to realize
11:39:16 15 that we're dealing with having to look through a lot of
11:39:20 16 documents, not only some for my law firm, but for --

11:39:25 17 THE COURT: Yeah. I can tell you right now I feel
11:39:29 18 your pain, but it's probably going to be next Friday. I'm
11:39:32 19 just -- I don't see any other way around it because, you know,
11:39:37 20 delivery of the material Friday does give them the weekend and
11:39:42 21 time to prepare a written product that gets dropped on
11:39:45 22 Judge Yeakel's staff on Tuesday or Monday, hopefully, and then
11:39:51 23 you-all have got to turn right around and work on a reply. And
11:39:55 24 it's a brutal schedule. I'm -- but I'm just being candid with
11:40:01 25 you. I think it's going to be next Friday.

11:40:03 1 Okay. The stipulation thing is still a challenge for
11:40:15 2 me because it strikes me that if there are stipulations, then
11:40:19 3 there's room for narrower RFP's. That's the argument that
11:40:27 4 Schlumberger just made. But if there are no stipulations, then
11:40:30 5 they argue they are entitled to a broader amount of
11:40:37 6 information.

11:40:38 7 Help me with how I can craft something where I can't
11:40:46 8 make the stipulation -- I mean, is there room here to take a
11:40:49 9 break and you-all talk and I don't -- or not? Here's what --
11:40:53 10 here's our alternative: The smartest person on my staff,
11:41:00 11 Ms. Gilbert here, and I will go back and we'll go through each
11:41:05 12 one of your RFPs and call a ball and a strike based on
11:41:08 13 everything I've read and everything that you-all have argued
11:41:11 14 this morning.

11:41:12 15 Like I said, it's an inexact science and it's going
11:41:16 16 to invariably probably make both sides unhappy. But that's
11:41:23 17 kind of where I'm thinking we are right now unless you-all have
11:41:28 18 got some other way of helping me make that analysis.

11:41:37 19 MR. COLLINS: I'm not sure that I do, but I'm
11:41:39 20 certainly open to discussing it with counsel.

11:41:41 21 THE COURT: Sure.

11:41:52 22 MR. GRANT: Your Honor, I think the truth is, if you
11:42:02 23 order proper scope of discovery, for example, that --

11:42:07 24 THE COURT: What if it's an improper scope of
11:42:12 25 discovery?

11:42:12 1 MR. GRANT: Well, then it is what it is, Your Honor.
11:42:15 2 But here's what I would submit: If we get the right scope of
11:42:18 3 discovery, those stipulations would be agreed to like that.
11:42:21 4 Because the truth is, based on what it sounds like I'm hearing,
11:42:29 5 there's plenty of documents that's going to show substantive
11:42:32 6 communications between Mr. Collins and Mr. Fischman. And
11:42:34 7 that's all we need to establish.

11:42:36 8 Now, whether Judge Yeakel thinks that's enough,
11:42:39 9 that's an issue for another day. But, factually, if he agrees
11:42:43 10 with us, that's what he has to be able to put in his order.

11:42:46 11 THE COURT: Well, right. But I could see you-all
11:42:49 12 having this hearing on the 20th and Mr. Collins saying, Yes.
11:42:52 13 I've had communications. As an officer of the court
11:42:55 14 representing that in open court, I've had these communications.
11:42:58 15 I'm not sure we've got to get into the need for logs because
11:43:04 16 all of that is going to be privileged.

11:43:06 17 MR. GRANT: Why can't we get that on the record
11:43:08 18 today, sir? It seems easy.

11:43:10 19 THE COURT: Well, he's related that his -- at least
11:43:12 20 the stipulations -- you know, bottom line, I'm not going to
11:43:15 21 strong arm anybody to stipulate. If he doesn't want to
11:43:18 22 stipulate, he doesn't want to stipulate.

11:43:20 23 MR. GRANT: I understand.

11:43:21 24 THE COURT: What he does at the hearing, I don't
11:43:22 25 know. But the bottom line here is what I'm going to end up

11:43:30 1 doing is a compromise between what you really want and what
11:43:33 2 you're going to get. And, really, that doesn't make sense.
11:43:37 3 It's going to be a compromise between what you want and what
11:43:41 4 they don't want you to have.

11:43:42 5 MR. GRANT: I understand.

11:43:43 6 THE COURT: If I make a call there that's wrong, it's
11:43:48 7 going to come up at the hearing.

11:43:50 8 MR. GRANT: Yes, sir.

11:43:50 9 THE COURT: And at that time Judge Yeakel -- he's
11:43:55 10 been doing this a whole lot longer and he's a lot smarter than
11:43:58 11 I am. He can do a bunch of different things. He can continue
11:44:01 12 the hearing. He can provide an opportunity to get some of
11:44:04 13 this. So I'm not as worried about that. I'm worried about
11:44:09 14 overbreadth and going too far here, frankly.

11:44:15 15 But last question for you-all is: As I look at these
11:44:23 16 RFPs and I compare the two sides and the redline versions, is
11:44:31 17 there anything you can offer or tell me that can make that job
11:44:38 18 easier? For instance --

11:44:44 19 MR. GRANT: Yeah.

11:44:45 20 THE COURT: -- you said a moment ago that I think,
11:44:47 21 one and two or three, four, and four, you don't need those on
11:44:51 22 certain ones. Are there certain things that --

11:45:12 23 MS. GRANT: Let's just walk you through them,
11:45:15 24 Your Honor. It won't take long.

11:45:16 25 THE COURT: Yeah. Let's do that.

11:45:18 1 MS. GRANT: Your Honor, just one last thing.

11:45:21 2 THE COURT: Sure.

11:46:17 3 MR. GRANT: I just want to make sure I'm clear. I
11:46:19 4 understood that whatever the Court says needs to be produced
11:46:23 5 will get produced by Friday. I would just ask that it be
11:46:26 6 something reasonable, like 5 p.m., not midnight.

11:46:29 7 THE COURT: Yeah. It's going to be end of --
11:46:31 8 5 o'clock Central Standard Time or whatever we're in. Can we
11:46:39 9 just go through the black binder? Is that the best way to go.

11:46:55 10 MR. CONNOLLY: Sure, Your Honor.

11:47:04 11 MR. GRANT: We could also put them up on the screen
11:47:07 12 if that makes it easier.

11:47:09 13 THE COURT: All right. Whatever is quickest and gets
11:47:12 14 me to where I need to be.

11:47:14 15 MR. CONNOLLY: Okay. Your Honor. I think that
11:47:16 16 what -- if you look at the tab 1-C, Your Honor.

11:47:19 17 THE COURT: Yes.

11:47:22 18 MR. CONNOLLY: And I believe everybody has a copy of
11:47:24 19 this, Your Honor.

11:47:28 20 So the preliminary stuff, Your Honor, is just the
11:47:32 21 definitions. And if it's not highlighted, there's no debate
11:48:48 22 about it. With -- so the -- and this tab deals with the
11:48:55 23 plaintiff Dynamic Geosolutions.

11:49:00 24 THE COURT: Okay.

11:49:02 25 MR. CONNOLLY: We're extremely close with respect to

11:49:04 1 the request for productions themselves. We've got the
11:49:07 2 disagreement with respect to the stipulations.

11:49:09 3 THE COURT: Sure.

11:49:11 4 MR. CONNOLLY: Part of this is that most of these
11:49:16 5 have got to do with the fact that there is a defined term in
11:49:23 6 the definitions that are under tab one, Your Honor, of Acacia
11:49:28 7 persons and entities. That's a defined term.

11:49:31 8 THE COURT: Where are you now, sir?

11:49:34 9 MR. CONNOLLY: Okay. I'm at tab 1-C.

11:49:37 10 THE COURT: Yes.

11:49:38 11 MR. CONNOLLY: Approximately four pages from the end,
11:49:41 12 you'll start seeing some redlining about four or five pages
11:49:47 13 from the end. The first line of the page reads "modified
11:49:50 14 request for production."

11:49:51 15 THE COURT: Got it.

11:49:52 16 MR. CONNOLLY: Okay. Apologies, Your Honor, for not
11:49:55 17 directing you to that page earlier.

11:49:57 18 THE COURT: No. That's okay.

11:49:58 19 MR. CONNOLLY: So what this is, Your Honor, is it
11:50:00 20 basically shows the -- in the highlighting where the parties
11:50:04 21 have a little bit of a difference. Many of these differences I
11:50:08 22 believe are typographical errors or just a misunderstanding.
11:50:14 23 The -- the requests themselves, the definitions, contain a
11:50:21 24 defined term. It's called Acacia persons and entities.
11:50:25 25 Mr. Collins had changed the conjunction "and" to "or." We just

11:50:35 1 can't accept that because the defined term is actually Acacia
11:50:39 2 persons and entities. I assume that that's not a problem.

11:51:05 3 MR. COLLINS: It's not a problem.

11:51:20 4 THE COURT: So, for instance, when we're looking at
11:51:22 5 this, blue is what Schlumberger wants; is that correct?

11:51:30 6 MR. CONNOLLY: Yes -- no. Blue -- these blue are
11:51:36 7 what Mr. Collins changed to our requests. But I think --

11:51:42 8 THE COURT: Okay. In other words, just looking at
11:51:44 9 the first one, 1A, Mr. Collins changed the "and" and wants an
11:51:52 10 "or," and you're okay with that?

11:51:55 11 MR. CONNOLLY: No.

11:51:58 12 THE COURT: You're not okay with that.

11:52:14 13 MR. CONNOLLY: He's okay with going back to the way
11:52:16 14 we had it.

11:52:17 15 THE COURT: Okay. He's okay with going back to
11:52:20 16 "and."

11:52:20 17 MR. CONNOLLY: Right. So we have an agreement now
11:52:23 18 based upon Mr. Collins --

11:52:26 19 THE COURT: Okay.

11:52:27 20 MR. CONNOLLY: Mr. Collins just misunderstood why we
11:52:29 21 used the term "and." It's because it's a defined term.

11:52:33 22 THE COURT: Okay. Super.

11:52:34 23 MR. CONNOLLY: So we have an agreement on the
11:52:36 24 language of 1A. With respect to the language in 1B, I think
11:52:40 25 Mr. Collins wants the underscored words "in any way" out.

11:52:48 1 MR. COLLINS: That's correct.

11:52:49 2 THE COURT: Okay.

11:52:51 3 MR. CONNOLLY: So he had just not taken that out as
11:52:54 4 typo.

11:53:12 5 THE COURT: Okay. Because I don't think we have to
11:53:14 6 go through all of this as long as I understand what the blue
11:53:16 7 and the red means. So like where it says "in any way" there on
11:53:20 8 number 1B, Mr. Collins, that's what Schlumberger wants but you
11:53:25 9 don't want that?

11:53:32 10 MR. CONNOLLY: Actually, maybe the easiest thing to
11:53:34 11 do Your Honor is I can point out the ones that are really
11:53:37 12 significant. We just didn't want to mislead Your Honor. And
11:53:41 13 we were doing this about 11 o'clock at night, Your Honor.

11:53:43 14 THE COURT: It's actually quite impressive.

11:53:46 15 MR. CONNOLLY: Well, I can certainly thank my
11:53:48 16 colleagues for that.

11:53:49 17 THE COURT: Yeah. Where is Ms. -- is it Amstutz?

11:53:54 18 MR. CONNOLLY: Yeah.

11:53:54 19 THE COURT: She did all the darn work. Where is she?

11:54:30 20 UNIDENTIFIED SPEAKER: She's back at the office.

11:54:32 21 THE COURT: Oh, jeez. Okay. Go ahead, Mr. Connolly.

11:55:35 22 MR. CONNOLLY: Okay, so I honestly think -- and I'll
11:55:37 23 just describe this to Mr. Collins. "Person" is a defined term,
11:55:42 24 so that's why we used the capital P. I think we're in a
11:55:46 25 agreement -- and, Mike, if you have any disagreement with this,

11:55:49 1 let me know. I think we're in agreement with respect to
11:55:52 2 everything on that first page.

11:55:54 3 THE COURT: Okay.

11:55:55 4 MR. CONNOLLY: The changes that we have are
11:55:56 5 typographical errors or Mr. Collins didn't take out a phrase
11:56:04 6 that we did take out because he had taken out others and we
11:56:06 7 just wanted to be consistent.

11:56:09 8 THE COURT: Okay.

11:56:09 9 MR. CONNOLLY: It actually cuts in his favor. So
11:56:12 10 where we have a disagreement is on now turning to page 9 of the
11:56:17 11 document.

11:56:19 12 THE COURT: Yes.

11:56:19 13 MR. CONNOLLY: The disagreement has to do with the
11:56:24 14 request for production number 8. This dovetails with the
11:56:29 15 discussion that we had earlier with respect to Acacia. And
11:56:32 16 this has to do with the documents sufficient to show the
11:56:38 17 corporate structure of any Acacia entity that was involved to
11:56:45 18 show the identities of the officers, directors, and attorneys
11:56:48 19 of the Acacia persons.

11:56:50 20 THE COURT: Okay.

11:56:51 21 MR. CONNOLLY: Okay.

11:56:51 22 THE COURT: So Mr. Brennan?

11:56:56 23 MR. BRENNAN: Yes, Your Honor.

11:56:58 24 THE COURT: I don't know if -- do we have a
11:57:00 25 counterproposal from you? I'm not sure that we do. In other

11:57:05 1 words, if you -- if you were to re-craft eight, how -- what
11:57:09 2 would you want it to say or what are you willing to have it
11:57:15 3 say?

11:57:15 4 MR. BRENNAN: Yes, Your Honor. Excuse me. This is
11:57:22 5 pretty simple, Your Honor. Mr. Connolly said what they're
11:57:27 6 interested in is any Acacia entity that was involved. I take
11:57:34 7 that to mean involved with the '319 patent because that's what
11:57:40 8 we're talking about here. There are two entities. There is
11:57:45 9 Acacia Research Group LLC, which is my client --

11:57:50 10 THE COURT: Okay.

11:57:52 11 MR. BRENNAN: -- and there is Dynamic 3D, the
11:57:55 12 plaintiff. My client assigned the patent rights after it
11:57:59 13 acquired them to the plaintiff, so we're talking about two
11:58:03 14 entities.

11:58:06 15 Your Honor, we would have no problem agreeing to
11:58:11 16 produce documents sufficient to show the identities and titles
11:58:20 17 of the individuals listed on a privilege log that are produced
11:58:28 18 in conformity with whatever agreement the parties reach today
11:58:33 19 or whatever the Court orders.

11:58:36 20 THE COURT: So if I understand what you're saying,
11:58:39 21 you don't -- I mean, what I'm inclined to do is say, to the
11:58:45 22 extent this request for production is repeated with Dynamic and
11:58:51 23 the law firm, I'm not doing it there. But with regard to
11:58:54 24 Acacia, you're okay with number 8?

11:58:56 25 MR. BRENNAN: I'm sorry?

11:58:58 1 THE COURT: You're okay with request for production
11:59:00 2 number 8 as I'm looking at it here on page 9 of 1-C.

11:59:04 3 MR. BRENNAN: No, Your Honor. We think -- we think
11:59:11 4 as it's stated here on page 9 it's overbroad, and I'll explain
11:59:16 5 why. The request -- and it's a little bit convoluted. But
11:59:22 6 documents sufficient to show the identities of the officers,
11:59:28 7 directors, and attorneys of the Acacia persons and entities
11:59:35 8 referred to or identified by any documents produced or listed
11:59:41 9 on a privilege log and the reporting of relationships among
11:59:51 10 those persons or entities.

11:59:53 11 The problem with that, Your Honor, is that if we're
11:59:55 12 talking about attorneys for Acacia Research Group, that's a lot
12:00:01 13 of attorneys. Acacia Research Group is involved in different
12:00:07 14 types of litigation that has nothing to do with this patent,
12:00:13 15 and that would involve identifying in-house attorneys, outside
12:00:19 16 counsel, that are involved in all --

12:00:22 17 THE COURT: But if they're on a privilege log, if
12:00:25 18 that whole -- that broader group won't be on the privilege log,
12:00:29 19 will they?

12:00:30 20 MR. BRENNAN: So if -- if that's how we're reading
12:00:33 21 this --

12:00:33 22 THE COURT: That's what it says.

12:00:36 23 MR. BRENNAN: -- is that -- because if you read this,
12:00:39 24 the plain language of this to me suggests, Your Honor, that
12:00:43 25 it's not limiting that way because it's asking -- if people are

12:00:48 1 identified -- if people or entities are identified on the
12:00:52 2 privilege log, it's asking for the identification of all of
12:00:56 3 those entities' attorneys. And what I'm trying to explain is
12:01:02 4 that's a lot of people that have nothing to do with the patent
12:01:08 5 or with this lawsuit.

12:01:09 6 THE COURT: Okay.

12:01:13 7 MR. CONNOLLY: Your Honor, can I just interrupt one
12:01:15 8 second?

12:01:15 9 THE COURT: Sure.

12:01:15 10 MR. CONNOLLY: It might make things simpler. I
12:01:19 11 apologize.

12:01:19 12 THE COURT: Yeah. You can use that. They're all
12:01:37 13 hot, so you can use that microphone right there.

12:01:41 14 MR. CONNOLLY: Thank you. Your Honor, the -- first
12:01:43 15 off, we're happy to agree to exclude outside counsel who are
12:02:12 16 not working on the '319 patent. So if that's what he means by
12:02:19 17 "a lot of entities," we don't need -- if there's -- the
12:02:23 18 identification of all their outside counsel that work on other
12:02:27 19 cases that don't have anything to do with this case.

12:02:30 20 THE COURT: Let me -- let me ask you this: This
12:02:33 21 question is going to be allowed -- some variation of this will
12:02:40 22 be authorized to Acacia. Can you two sit down and hammer
12:02:46 23 something out and then give it to me because, one, before we're
12:02:51 24 done, I'm going to ask you all to send by e-mail Word documents
12:02:58 25 that reflect everything in this binder to my clerk because

12:03:03 1 our -- the way the order is going to read -- be crafted is it's
12:03:11 2 going to have the order and cite Exhibits 1, 2, 3, and 4, which
12:03:14 3 are going to be the RFPs that are authorized. And it's going
12:03:17 4 to be -- it will make her job a whole lot easier.

12:03:22 5 MR. CONNOLLY: Sure.

12:03:23 6 THE COURT: So this one, if you can get it to us by
12:03:26 7 the end of day -- you can just E-mail Ms. Gilbert -- what you
12:03:32 8 can agree on in eight. And if you don't agree, send me a red
12:03:35 9 line of where you disagree.

12:03:37 10 MR. CONNOLLY: Happy to do that, Your Honor.

12:03:40 11 THE COURT: Okay. Super.

12:03:41 12 MR. BRENNAN: Thank you, Your Honor.

12:03:43 13 THE COURT: Okay. Then still with 1-C, I'm -- I
12:03:45 14 don't even want to talk about factual stipulations, so -- or, I
12:03:50 15 mean, conditions.

12:53:01 16 MR. CONNOLLY: You can see that's where all the
12:53:04 17 action is, in the factual stipulation.

12:53:05 18 THE COURT: Right. So moving on to 2-A or C.

12:53:08 19 MR. CONNOLLY: Probably the easiest thing,
12:53:10 20 Your Honor, 2-C, this deals with Austin Geo.

12:53:19 21 THE COURT: Okay.

12:53:21 22 MR. CONNOLLY: Austin Geo is another one of
12:53:24 23 Mr. Collins' client, and Austin Geo was the original assignee
12:53:29 24 of the patent.

12:53:30 25 THE COURT: Right.

12:53:31 1 MR. CONNOLLY: So if you turn towards the end of
12:53:34 2 that --

12:53:35 3 THE COURT: That's page 8?

12:53:39 4 MR. CONNOLLY: Page 8. Yes, Your Honor. Again,
12:53:48 5 we're down to some very short strokes here. First off, I take
12:53:54 6 it from Mr. Collins' agreement to go back to the use of the
12:53:58 7 conjunction "and" instead of "or" in the phrase "Acacia persons
12:54:02 8 and entities," that's not objectionable; is that right, Mike?

12:54:09 9 MR. COLLINS: That's not objectionable.

12:54:11 10 THE COURT: Okay.

12:54:12 11 MR. CONNOLLY: Okay. So where we really are here,
12:54:14 12 Your Honor, is Mr. Collins had objected to the use of the
12:54:16 13 phrase "or associated with."

12:54:18 14 THE COURT: Yes.

12:54:19 15 MR. CONNOLLY: And that's kind of consistent
12:54:21 16 throughout, so that's a scope of distinction. If he wants to
12:54:25 17 modify his view, we -- we do think it's important to get
12:54:29 18 "associated with" in addition to "employed." So that shows you
12:54:32 19 a substantive distinction.

12:54:33 20 THE COURT: Okay.

12:54:34 21 MR. CONNOLLY: Minor distinction in 1-B, we think
12:54:38 22 just as matter of grammar, we need to include the word "or."
12:54:42 23 Otherwise the implication is it has to relate to all five of
12:54:46 24 those -- all six of those entities.

12:54:48 25 THE COURT: So I need to keep that "or"?

12:54:50 1 MR. CONNOLLY: Yes. I believe -- and I don't think
12:54:53 2 there's much of debate there.

12:54:54 3 Farther down, Your Honor, this is a substantive
12:55:02 4 disagreement in five and six. It also carries over to page 9.
12:55:06 5 There's a disagreement as to, again, "associated with." And he
12:55:11 6 wants to leave it -- he wants to exclude the references to
12:55:17 7 Acacia persons, entities, Collins Edmonds, and/or Austin Geo.

12:55:23 8 And, Your Honor, our view is, if Austin Geo has
12:55:31 9 possession of documents that we -- that we're not going to
12:55:36 10 otherwise get that include those entities, we're entitled to
12:55:42 11 get them from Austin Geo. But we've also made it clear,
12:55:45 12 Your Honor, we don't need identical sets of documents from each
12:55:53 13 of the subpoenaed parties. We want one comprehensive set of
12:55:57 14 documents and one comprehensive set of privilege logs knowing
12:56:04 15 who actually is the custodian.

12:56:06 16 So the -- the exclusion of "Acacia persons and
12:56:11 17 entities, Collins Edmonds" would allow for the possibility that
12:56:15 18 we might not get a document that they are the only custodian
12:56:19 19 of.

12:56:19 20 THE COURT: Okay.

12:56:20 21 MR. CONNOLLY: And if they don't have any, again,
12:56:23 22 there's no burden with respect to that.

12:56:25 23 THE COURT: All right.

12:56:26 24 MR. CONNOLLY: And, Your Honor, on page 9 of the same
12:56:28 25 document, there are also just minor typographical changes that

12:56:34 1 I think we -- I shouldn't say that -- we've either already
12:56:37 2 covered them. For example, the references to "associated with"
12:56:40 3 and the references to those three other entities or it's
12:56:43 4 typographical error which I think is indicated in -- in request
12:56:49 5 for production number 9, the exclusion of the sub --

12:56:53 6 THE COURT: Again, in an effort to understand this,
12:56:55 7 going back to page 8 at the top, what's the difference between
12:56:59 8 the Austin Geomodeling, Inc. that's crossed out and the Austin
12:57:03 9 Geomodeling that's in blue?

12:57:07 10 MR. CONNOLLY: I should ask that question.

12:57:12 11 MR. HUMPHREY: I think it was just a difference in
12:58:18 12 the *[unintelligible]*.

12:58:30 13 THE COURT: Okay. All right. So moving on to three.
12:58:35 14 Three, I know, is a little different.

12:58:37 15 MR. CONNOLLY: 3-B is a different issue. It's just a
12:58:40 16 question of we're not -- we're not willing to withdraw the
12:58:44 17 subpoenas, Your Honor.

12:58:48 18 THE COURT: So you continue -- let me get my bearings
12:58:52 19 here. Is there any agreement on the RFPs to Mr. Collins and
12:59:37 20 his firm? Or when -- I'm looking at page 10 of 3-A. No.
12:59:43 21 That's the factual stipulation. Page 8 of 3-A.

13:00:00 22 MR. COLLINS: No, Your Honor. My firm's position and
13:00:02 23 my position are that once we agree to production from Dynamic
13:00:11 24 3D Geo and we agree that it's going to include documents from
13:00:16 25 the files of outside counsel that are responsive, then there's

13:00:20 1 no need to have any subpoena or any stipulations from my law
13:00:24 2 firm or me individually. It's the same set of documents, and
13:00:30 3 it's just simply harassment to make us jump through that hoop
13:00:35 4 twice.

13:00:36 5 MR. CONNOLLY: And, Your Honor, may I address that?

13:00:39 6 THE COURT: Well, I mean my quick thought would be,
13:00:56 7 what if Rutherford calls you -- again, this all presupposes
13:01:01 8 you're not telling the truth, which is just -- I can't wrap my
13:01:05 9 arms around that. Rutherford calls you and says, hey, listen.
13:01:09 10 I know this secret about Schlumberger. We need to exploit it.
13:01:13 11 You go, Great, hang up, and then you write an e-mail to your
13:01:17 12 staff. That's not going to show up in Dynamic 3D's record.

13:01:23 13 MR. COLLINS: It would, Your Honor, because what I've
13:01:25 14 said is, if a document request is directed to Dynamic Geo,
13:01:31 15 we're going to agree that we're not only going to search and
13:01:36 16 produce documents from Dynamic Geo's files, but our files as
13:01:41 17 well.

13:01:41 18 THE COURT: Yeah. It's just another stipulation that
13:01:43 19 I can't make you make, you know. Okay. So bottom line is you
13:01:49 20 object to all of the RFP's directed to your firm.

13:01:55 21 MR. COLLINS: That's correct.

13:01:56 22 THE COURT: Got it. Now, the one we don't have here
13:01:59 23 is Acacia. But to the extent, for instance, I can use the AGM
13:02:03 24 as a guide, Schlumberger, doesn't need three, four, or five
13:02:08 25 answered for Acacia, does it?

13:02:12 1 MR. CONNOLLY: I -- the -- it does -- well, with
13:02:16 2 respect to the -- the only issues with respect to the Acacia
13:02:21 3 ones are we have agreed to eliminate three and four subject to
13:02:29 4 our request for stipulations from that party. And, if not, we
13:02:37 5 believe that those are appropriate requests.

13:02:39 6 THE COURT: You're right. I mis-said it.

13:02:41 7 MR. CONNOLLY: So the only unconditional withdrawal,
13:02:44 8 if I could say that, Your Honor -- and, again, I hesitate to
13:02:47 9 say it's a condition. We view it as an accommodation to what
13:02:51 10 we think is an otherwise appropriate request. But with respect
13:02:54 11 to the Dynamic -- I'm sorry -- with respect to Austin Geo, a
13:03:08 12 non-Acacia entity, we -- what we withdrew from them is already
13:03:12 13 reflected in there. We're not asking for them -- those were
13:03:15 14 unconditional withdrawals. Okay? All the other narrowing,
13:03:25 15 et cetera, we did it in response to the statements that we
13:03:27 16 heard, that it would be unduly burdensome to do privilege logs.
13:03:29 17 And that's how we crafted these.

13:03:31 18 THE COURT: Okay.

13:03:32 19 MR. CONNOLLY: All right. And, Your Honor, with
13:03:34 20 respect to Austin -- with respect to ARG, Acacia Research
13:03:42 21 Group, as well as Mr. Fischman, we had agreed to -- there's no
13:03:51 22 difference between the requests that we were -- that we
13:03:54 23 directed to them and now the requests that we've directed to
13:03:58 24 the others subject to all the stipulations stuff. And the only
13:04:04 25 real difference with respect to those entities is this

13:04:09 1 organizational information, request number 8.

13:04:12 2 THE COURT: Okay.

13:04:13 3 MR. CONNOLLY: Have I sufficiently confused
13:04:16 4 everybody, Your Honor?

13:04:16 5 THE COURT: I think you-all have done a great job.
13:04:18 6 My goal here is not to be a hindrance, but to help you-all get
13:04:23 7 to where you need to be. So we're going to work today and
13:04:26 8 tomorrow and get that order out. I can tell you, generally
13:04:29 9 speaking, the shape of the order. It will require production
13:04:32 10 next Friday.

13:04:33 11 Mr. Collins, I'm going to wrestle with the impact on
13:04:37 12 your firm. But even -- but given your representation here that
13:04:43 13 you're going to give up any e-mails given Dynamic's receipt, I
13:04:49 14 mean, you've probably already started working on that
13:04:51 15 production. I'm telling you-all that because don't wait for my
13:04:56 16 order on Friday. You -- you-all, really, when I look at --
13:05:00 17 you're really close. In many ways, I'm still -- I don't know
13:05:05 18 really why we're having a hearing because you're so close. But
13:05:09 19 that's neither here nor there.

13:05:11 20 The order will be -- will just have Exhibits 1, 2, 3,
13:05:15 21 and 4, and it will be the RFPs that should be answered with
13:05:21 22 regard to the four subpoenas that form the basis of your
13:05:25 23 current disagreement.

13:05:27 24 And, again, a reminder, if -- when we -- when we
13:05:33 25 finish up here, if you can get Ms. Gilbert's e-mail address and

13:05:37 1 then somebody send in the A, Bs, and Cs for each of these. And
13:05:47 2 number 8 -- I think it's number 8 -- with regard to Acacia if
13:05:53 3 you-all are able to reach some type of agreement.

13:05:55 4 MR. CONNOLLY: If we're able to reach agreement,
13:05:57 5 Your Honor, we'll let you know. If we're not, we'll have two
13:06:00 6 proposals down and we'll redline it and it will have the same
13:06:03 7 format to follow.

13:06:04 8 THE COURT: Perfect.

13:06:05 9 MR. COLLINS: We'll do that, Your Honor. I think it
13:06:08 10 may call for us to submit clean copies of what we're proposing
13:06:12 11 because, Terry, I may be wrong, but I couldn't find it in this
13:06:16 12 binder, a clean copy of our proposal.

13:06:20 13 MR. CONNOLLY: I can't speak to that, Michael, but I
13:06:22 14 certainly have no objection.

13:06:25 15 MR. COLLINS: Steve?

13:06:27 16 MR. WINGARD: Your proposal should be behind the
13:06:30 17 D tabs.

13:06:32 18 MR. COLLINS: Okay.

13:06:32 19 THE COURT: Yeah. Get that straight, because
13:06:34 20 whatever you e-mail me, I'm going to take it as gospel that's
13:06:38 21 Schlumberger's last version and Mr. Collins' last version.

13:07:11 22 MR. GRANT: And we'll coordinate.

13:09:06 23 UNIDENTIFIED SPEAKER: Yeah. We'll copy each other,
13:09:12 24 Your Honor.

13:09:16 25 UNIDENTIFIED SPEAKER: Yes. Absolutely. I think the

13:09:18 1 problem was, in the version that they submitted, there were
13:09:20 2 redlines. And I do believe that I have clean copies.

13:09:24 3 THE COURT: Okay.

13:09:26 4 UNIDENTIFIED SPEAKER: For the Court without all the
13:09:29 5 redlining.

13:09:29 6 THE COURT: Okay. However you send it, just make on
13:09:31 7 the e-mail, do the obvious which is just make it real clear to
13:09:34 8 Ms. Gilbert which one is which. But given -- given how much
13:09:40 9 work you-all have done on this, I'm confident that you would
13:09:43 10 have done that anyway. So anything else that I can do to help
13:09:48 11 you-all today?

13:09:50 12 MR. GRANT: I just appreciate the Court's time and
13:09:52 13 effort.

13:09:52 14 THE COURT: Oh, you're welcome. I kind of half
13:09:57 15 enjoyed it.

13:09:57 16 Mr. Connor?

13:09:58 17 MR. CONNOR: Yes, Judge. If I may, I'd like to
13:10:00 18 address the last point which is unique now to ARG and
13:10:04 19 Mr. Fischman, which are those request numbers 3 and 4 that we
13:10:08 20 heard that Schlumberger is still seeking from the third
13:10:14 21 parties. It's our position, first of all, that the
13:10:19 22 stipulations that they would like in order to drop those
13:10:22 23 requests are inappropriate. And I don't see -- if the
13:10:31 24 stipulations are reached between the parties, it probably
13:10:37 25 obviates the need for any stipulation with nonparties, first

13:10:41 1 point.

13:10:42 2 MR. CONNOLLY: May I? I'm sorry for the
13:10:44 3 interruption. Your Honor, that's fine. If we get stipulations
13:10:47 4 for the party, we don't need them from non -- from nonparties.
13:10:51 5 The issue is we haven't gotten them from anybody.

13:10:56 6 MR. CONNOR: So with respect to the breadth of
13:10:58 7 requests 3 and 4 that Your Honor --

13:11:01 8 THE COURT: To Acacia?

13:11:04 9 MR. CONNOR: To Acacia and to Mr. Fischman.

13:11:06 10 THE COURT: Okay.

13:11:10 11 MR. CONNOR: Third parties.

13:11:11 12 THE COURT: Okay. All right.

13:11:12 13 MR. CONNOR: Those two requests really swallow the
13:11:15 14 rest of them. You know, there are several requests -- five,
13:11:18 15 six, and seven, for example -- that specifically target
13:11:22 16 documents evidencing communications regarding participation in
13:11:28 17 the lawsuit, the decision to initiate the lawsuit, and the
13:11:32 18 decision to acquire the patent from Austin Geo.

13:11:36 19 Those are tailored. I see that there's an agreement.
13:11:43 20 Requests three and four basically swallow those up, and they
13:11:48 21 are directed to documents that evidence or reflect any
13:11:53 22 communication between anybody at Acacia or involving
13:11:58 23 Mr. Fischman that is unbounded by any of those scopes in five,
13:12:08 24 six, and seven.

13:12:10 25 So we don't think that those two requests are

13:12:12 1 appropriate at all, and I think it's reflected by the fact
13:12:15 2 they've withdrawn them. They should also be withdrawn with
13:12:19 3 respect to ARG and Mr. Fischman.

13:12:22 4 MR. GRANT: Just two sentences, Your Honor, will help
13:12:25 5 explain. The distinction is the communications between
13:12:28 6 Ms. Rutherford and Acacia are irrebuttably presumed to have
13:12:33 7 occurred. The communications between Acacia and Collins
13:14:14 8 Edmonds firm are rebuttably presumed to have occurred. So
13:14:18 9 that's why there's a distinction. And the law as to the first
13:14:22 10 one, we don't need any evidence that's not important. But as
13:14:27 11 to the second one, Judge Yeakel has to see that evidence in
13:14:30 12 order for him to determine whether that presumption is
13:14:33 13 rebutted. That's the distinction.

13:14:35 14 THE COURT: But did I understand that there's some
13:14:38 15 stipulation that could be made that could obviate the need for
13:14:42 16 three and four?

13:14:53 17 UNIDENTIFIED SPEAKER: Yes, sir. There could be for
13:15:02 18 sure.

13:15:04 19 MR. COLLINS: Yes, Your Honor.

13:15:05 20 THE COURT: Okay.

13:15:06 21 MR. COLLINS: And you'll see in our proposal we've
13:15:09 22 already offered the following stipulation.

13:15:14 23 THE COURT: No. But are you making that one now on
13:15:16 24 the record, that -- so that I -- when we're putting this
13:15:20 25 together, I don't have to deal with three and four?

13:15:23 1 MR. COLLINS: Right. On the record I'll say that
13:15:25 2 attorneys employed by Collins Edmonds Pogorzelski Schlather &
13:15:29 3 Tower PLLC have had communications and conversations with
13:15:37 4 Matthew Vella, who is the president or CEO of Acacia, regarding
13:15:41 5 protection of Dynamic 3D's rights in the '319 patent through
13:15:50 6 possible litigation. We're also willing to say that -- and you
13:15:55 7 can read these.

13:15:56 8 THE COURT: Yeah. What are you looking at there? Is
13:15:59 9 that the -- the stipulation?

13:16:02 10 MR. COLLINS: I'm looking at the stipulations that
13:16:03 11 are in our proposal.

13:16:05 12 THE COURT: For Dynamic?

13:16:08 13 MR. COLLINS: For Dynamic.

13:16:10 14 THE COURT: Okay.

13:16:11 15 MR. COLLINS: Which I think would be 1-B or 1-C.

13:16:15 16 MR. GRANT: Your Honor, here's the competing ones.
13:16:18 17 And so there's a red line there. So the distinction has to do
13:16:23 18 with two things: One, the scope of who's participating in
13:16:59 19 those communications, and that goes to those organizational
13:17:03 20 issues. And then the second one has to do with the sort of
13:17:08 21 magic words that come from the case law. So, you know, that's
13:17:13 22 the distinction. And what -- what we can't do is we can't have
13:17:17 23 a stipulation that doesn't use the magic words of the case law,
13:17:21 24 because if Judge Yeakel relies on that in his ruling, I think
13:17:26 25 that's subject to, you know, being argued on appeal.

13:17:35 1 MR. CONNOLLY: So, for example, Your Honor, just so
13:17:37 2 you understand -- and these by the way, Your Honor, I think are
13:17:41 3 reflected -- you'd be able to parse through these. It's the
13:17:47 4 last few pages of tab 1-C.

13:17:49 5 THE COURT: Yeah.

13:17:51 6 MR. CONNOLLY: It shows you the difference -- the
13:17:53 7 differences. Just so you understand why we're using particular
13:17:57 8 words, you'll see we use the word "substantive" and Mr. Collins
13:18:04 9 struck it.

13:18:05 10 THE COURT: Okay.

13:18:06 11 MR. CONNOLLY: That phrase, "have had substantive
13:18:10 12 communications and conversations" comes from a case that we
13:18:16 13 rely upon and cite in our brief on the two motions.
13:18:24 14 Specifically if Your Honor wanted to see it, it's on page 27.

13:18:27 15 THE COURT: No. I'm with you there. So,
13:18:29 16 Mr. Collins, I'm not strong-arming you here at all. Are you
13:18:33 17 willing to put "substantive" and "possible" back in or ...

13:18:39 18 MR. COLLINS: I can't make that --

13:18:41 19 THE COURT: Okay.

13:18:42 20 MR. COLLINS: I can't make that stipulation,
13:18:43 21 Your Honor.

13:18:43 22 THE COURT: Okay. Well, then I'll look at three and
13:18:47 23 four and decide what to do.

13:18:49 24 MR. CONNOLLY: That's it, Your Honor.

13:18:51 25 THE COURT: Okay. Fair enough. All right.

13:18:53 1 Mr. Connor, you -- I think you had the floor. Do you have
13:18:57 2 anything else you'd like to add?

13:18:59 3 MR. CONNOR: Just one more thing, Your Honor. So
13:19:02 4 if -- if request 3 were complied with by Acacia and
13:19:10 5 Mr. Fischman, it wouldn't give them the substantive
13:19:16 6 communications they're requesting. It would -- it encompasses
13:19:20 7 everything -- plane reservations, lunch dates. The substantive
13:19:25 8 communications are already sought, and they're are already
13:19:27 9 within the scope of the other requests.

13:19:29 10 THE COURT: Okay. Okay. All right. Very good. Any
13:19:36 11 other last thoughts anybody wants to share?

13:19:41 12 UNIDENTIFIED SPEAKER: No, sir.

13:19:41 13 THE COURT: All right. Thank you, gentlemen. I
13:19:43 14 appreciate it.

13:19:44 15 (Proceedings concluded at 10:55 a.m.)

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REPORTER'S CERTIFICATE

I, Arlinda Rodriguez, do hereby certify that the foregoing was transcribed from an electronic recording made at the time of the aforesaid proceedings and is a correct transcript, to the best of my ability, made from the proceedings in the above-entitled matter, and that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

/S/ Arlinda Rodriguez

November 14, 2014

ARLINDA RODRIGUEZ

DATE